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09/655,223	09/05/2000	John Clare William Scott	148/244	7763

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Adam Schwartz & Evans P A
2180 Two First Union Center
Charlotte, NC 28282

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 05/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-10

Office Action Summary

Application No.
09/655823

Applicant(s)
SCOTT ET AL

Examiner
S. WEINSTEIN

Group Art Unit
1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 2/28/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-6, 9, 20-25 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-6, 9, 20, 24 is/are rejected.
- ☒ Claim(s) 21-23, 25 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 447
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

It is noted that claims 21, 22, 23 and 25 are dependent on canceled claims 17, 18, 19 and 19 respectively. Therefore, claims 21, 22, 23 and 25 are objected to as being incomplete.

It is also noted that applicants' problem and its solution is not clear. On page 2 of the specification, it is stated that if the liquid is exposed to vacuum for the first time in the vacuum packer, then the liquid that is boiled out tends to spray over the inside of the vacuum. Applicants' solution is to have a preliminary evacuation step. However, as disclosed, this preliminary evacuation step occurs in a vacuum packer. Why wouldn't the vacuum packer get sprayed in this preliminary step and is this the same vacuum packer that applicants' are concerned about getting sprayed in the conventional or packing, vacuum packer step? Clarification and/or correction is required. Applicants are cautioned against the addition of New Matter. Also, claim 1 does not seem to be entirely accurate. Claim 1 recites that the liquid element undergoes some treatment (i.e., "is treated") such that a substantial portion of the dissolved gases in the liquid element does not escape from the liquid element during a vacuum packing process. This language implies that the dissolved gases are still in the liquid element but do not come out during vacuum packing. The fact is though that the prior treatment eliminates the dissolved gases. It is suggested that this clarification should be added to the claims should applicants choose to respond.

Claim 24 is rejected under 35 USC 112, second paragraph. The phrase "said solid element" lacks antecedent basis in claim 20. Claim 20 only recites goods having a liquid element. As recited, the claim does not have to have any other elements. That

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is, the "goods" could be all liquid. See in this regard, applicants' disclosure wherein it is disclosed that the "goods" may comprise substantially "only" a "liquid element" (page 7, para. 1).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 9 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (2,286,999).

As evidenced by Smith, it is notoriously old to deaerate liquids prior to vacuum packaging. Note that Smith discloses a preliminary deaeration using vacuum for packing operations which package only liquids (e.g., page 1, col. 1, para. 4) or packaging operations which package both liquids and solids (e.g., page 3, col. 2, lines 65 plus). Thus, in regard to claim 1, Smith teaches treating a liquid element by subjecting it to gas removal by an evacuation process.

Thus, the liquid of Smith would inherently not have a substantial proportion of dissolved gases escape from the liquid during the vacuum packing process because the gases would already have been eliminated. Thus, Smith anticipates claims 1, 2 and 20 and performs the same steps claimed and disclosed. Smith also anticipates claim 9 since Smith teaches removing substantially all of the dissolved gases (page 1, col. 1, lines 42-44).

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith ('999) in view of Malmquist (1,980,417).

Claim 3 recites that the gas removal process occurs in a vacuum packer. The particular conventional apparatus one chooses to use to perform a conventional step is seen to have been an obvious matter of choice. One could view the overall Smith apparatus as a vacuum packer so that the gas removal would be occurring in a vacuum packer. Malmquist can be relied on to show another conventional apparatus wherein liquid undergoes a deaeration preliminary to a vacuum packing step wherein the gas removal is also a vacuum packer. To modify Smith, if necessary, and employ one conventional apparatus for another conventional apparatus for its art recognized and applicants' intended function would have been obvious. Claim 4 recites that the liquid element is placed in a container which is then placed in a cavity of a vacuum packer. Thus, claim 4 recites a batch operation for the preliminary deaeration. For industrial, commercial operations one would tend to use continuous or less manipulative batch operations to deaerate liquids such as shown in Smith wherein a vacuum tank is employed with thin film spraying or Malmquist wherein a static container (2) connected to a vacuum pump is employed, respectively. To employ a batch container that is moved into (and presumably out of) a vacuum packer cavity would have been obvious.

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The examiner takes notice of the fact that moving product containing vessels into and out of vacuum chambers in order to evacuate the product is, of course, notoriously old. In regard to claim 5, the volume of the container would have been an obvious determination since it is an obvious function of the volume of the liquid to be added. In regard to claim 6, the width of the container (2) of Malmquist is greater than its height or depth. It is noted in this regard that the relationship recited in claim 6 appears to be inconsistent. How does one compare a surface area which is a length squared to a depth which is just length?

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith ('999) in view of Malmquist ('417) and Groves (5543163).

As noted above, claim 24 lacks antecedent basis for the reasons given above. In any case, claim 24 recites that the solid element is pierced. Both Smith and Malmquist disclose deaeration of liquids that are to be packaged with solids. As evidenced by Groves, it is conventional in the art to pierce solids which are to undergo processing and packing with liquids and wherein the processing also includes vacuumizing. Piercing enhances the vacuumizing as well as other mass transfer. To modify Smith as further evidenced by Malmquist and pierce the solid to provide greater process efficiency would therefore have been obvious.

Claims 1, 2, 9 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hilpert (5,384,147), Liot (GB 1,543,512), Polk (1,980,695), Rahrooh et al (5,006,354) and Hanson (2,076,459), all of whom teach deaerating liquid prior to a vacuum packing step.

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Claims 1, 2, 9 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Kino et al (6,231,907) for the reasons given immediately above.

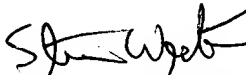
The remainder of the references cited on the USPTO 892 forms are cited as pertinent art.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn
May 12, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
5/16/03